

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, IDAHO
WILDLIFE FEDERATION, WASHINGTON
WILDLIFE FEDERATION, SIERRA CLUB,
TROUT UNLIMITED, PACIFIC COAST
FEDERATION OF FISHERMEN'S
ASSOCIATIONS, INSTITUTE FOR FISHERIES
RESOURCES, IDAHO RIVERS UNITED, IDAHO
STEELHEAD AND SALMON UNITED,
NORTHWEST SPORT FISHING INDUSTRY
ASSOCIATION, SALMON FOR ALL,
COLUMBIA RIVERKEEPER, AMERICAN
RIVERS, INC., FEDERATION OF FLY FISHERS,
and NW ENERGY COALITION,

Plaintiffs,

and

STATE OF OREGON,

Intervenor-Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE,
U.S. ARMY CORPS OF ENGINEERS, and
U.S. BUREAU OF RECLAMATION

Defendants,

CV 01-640-RE

OPINION AND ORDER

and

STATE OF IDAHO, STATE OF MONTANA,
KOOTENAI TRIBE OF IDAHO, NORTHWEST
IRRIGATION UTILITIES, PUBLIC POWER
COUNCIL, WASHINGTON STATE FARM
BUREAU FEDERATION, FRANKLIN COUNTY
FARM BUREAU FEDERATION, GRANT
COUNTY FARM BUREAU FEDERATION, BPA
CUSTOMER GROUP, and CLARKSTON GOLF
& COUNTRY CLUB,

Intervenor-Defendants.

REDDEN, Judge:

Before the court is the Columbia Snake River Irrigators Association's ("CSRIA's")
Renewed Motion to Intervene (doc. 1364). The motion is DENIED as premature.

Under the Administrative Procedure Act (APA), this court's jurisdiction over CSRIA's
proposed Endangered Species Act claims is limited to the review of "final agency actions."
5 U.S.C. § 701. A final agency action is one that marks the "consummation" of the agencies
decision-making process; one by which "rights or obligations have been determined," or from
which "legal consequences will flow." Bennett v. Spear, 520 U.S. 154, 177-78 (1997).

Four of CSRIA's five claims in its Proposed Complaint in Intervention challenge aspects
of Federal Defendant's yet-to-be-issued biological opinion, and are therefore not ripe for judicial
review under the APA. At present, Federal Defendants are in the process of producing a
biological opinion on remand. The draft biological opinion is not due until October 31, 2007, and
the Action Agencies must then complete the notice and public comment process before issuing a
final and legally binding biological opinion. In other words, Federal Defendants have taken no
action that could be characterized as the "consummation" of an agency decision-making process,

or from which "legal consequences will flow." Because Federal Defendants have not implemented any "final agency action," CSRIA's challenges to Federal Defendant's forthcoming biological opinion are not ripe for adjudication, and the court has no jurisdiction over its claims.

To the extent that CSRIA's Proposed Complaint in Intervention challenges the scientific basis for "flow targets" contained in the 2004 Biological Opinion (2004 BiOp), that claim is moot. This court already found that the 2004 BiOp violated the Endangered Species Act, and Federal Defendants are in the process of replacing that biological opinion. In effect, there is no 2004 BiOp to challenge. Furthermore, as the Ninth Circuit noted in affirming this court's denial of CSRIA's previous motion to intervene, even a favorable ruling on CSRIA's "best available science" claim would have little practical effect, as CSRIA does not challenge the 2004 BiOp's ultimate no jeopardy conclusion. Finally, *res judicata* bars CSRIA's attempt to re-litigate the legal issues that this court decided in its previous unsuccessful Motion to Intervene.

Because its challenges to the forthcoming biological opinion are not yet ripe, and its challenge to the scientific basis of the proposed action under the 2004 BiOp is moot, CSRIA's Renewed Motion to Intervene (doc. 1364) is DENIED.

IT IS SO ORDERED.

DATED this 19th day of July, 2007.

/s/ James A. Redden
James A. Redden
United States District Judge